

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

KLS DIVERSIFIED MASTER FUND, L.P.,

Case No.: 19-cv-03774

Plaintiff,

-against-

**ANSWER TO
COMPLAINT**

SEAN McDEVITT,

Defendants,

-----X

Defendant Sean McDevitt, by and through his attorney, WOOD, SMITH, HENNING & BERMAN LLP, as and for their Answer to Plaintiff's Complaint herein, respectfully allege upon information and belief as follows:

INTRODUCTION

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "1" of Plaintiff's Complaint.
2. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "2" of Plaintiff's Complaint.
3. Defendant denies the truth of each and every allegation contained in the paragraph numbered "3" of Plaintiff's Complaint.
4. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "4" of Plaintiff's Complaint.
5. Defendant respectfully refers questions of law to the Court. To the extent this paragraph infers any wrongdoing on the part of Defendant, it is denied.

PARTIES

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "6" of Plaintiff's Complaint.
7. Defendant admits each and every allegation contained in paragraph numbered "7" of Plaintiff's Complaint.
8. Defendant admits each and every allegation contained in the paragraph numbered "8" Plaintiff's Complaint.
9. Defendant respectfully refers questions of law to the Court. To the extent this paragraph infers any wrongdoing on the part of Defendant, it is denied.
10. Defendant respectfully refers questions of law to the Court. To the extent this paragraph infers any wrongdoing on the part of Defendant, it is denied.

FACTUAL ALLEGATIONS

11. Defendant admits that at the end of 2016 he owned 70.41% of the company's stock and served as its CEO and chairman of the Board of Directors, and denies the remaining allegations contained in the paragraph numbered "11" of Plaintiff's Complaint.
12. Defendant denies each and every allegation contained in the paragraph numbered "12" of Plaintiff's Complaint.
13. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "13" of Plaintiff's Complaint.
14. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "14" of Plaintiff's Complaint.
15. Defendant denies the truth of each and every allegation contained in the paragraph numbered "15" of Plaintiff's Complaint.

16. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "16" of Plaintiff's Complaint.
17. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "17" of Plaintiff's Complaint.
18. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "18" of Plaintiff's Complaint.
19. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "19" of Plaintiff's Complaint.
20. The allegations in the paragraph numbered "20" of Plaintiff's Complaint refer to specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.
21. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "21" of Plaintiff's Complaint.
22. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "22" of Plaintiff's Complaint.
23. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "23" of Plaintiff's Complaint.
24. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "24" of Plaintiff's Complaint.
25. The allegations in the paragraph numbered "25" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is

required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

26. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "26" of Plaintiff's Complaint.

27. The allegations in the paragraph numbered "27" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

28. The allegations in the paragraph numbered "28" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

29. The allegations in the paragraph numbered "29" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

30. The allegations in the paragraph numbered "30" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

31. The allegations in the paragraph numbered "31" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is

required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

32. The allegations in the paragraph numbered "32" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

33. The allegations in the paragraph numbered "33" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

34. The allegations in the paragraph numbered "34" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

35. Defendant denies the truth of each and every allegation contained in the paragraph numbered "35" of Plaintiff's Complaint.

36. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "36" of Plaintiff's Complaint.

37. The allegations in the paragraph numbered "37" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

38. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "38" of Plaintiff's Complaint.
39. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "39" of Plaintiff's Complaint.
40. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "40" of Plaintiff's Complaint.
41. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "41" of Plaintiff's Complaint.
42. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "42" of Plaintiff's Complaint.
43. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "43" of Plaintiff's Complaint.
44. The allegations in the paragraph numbered "44" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.
45. The allegations in the paragraph numbered "45" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.
46. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "46" of Plaintiff's Complaint.

47. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "47" of Plaintiff's Complaint.
48. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "48" of Plaintiff's Complaint.
49. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "49" of Plaintiff's Complaint.
50. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "50" of Plaintiff's Complaint.
51. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "51" of Plaintiff's Complaint.
52. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "52" of Plaintiff's Complaint.
53. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "53" of Plaintiff's Complaint.
54. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "54" of Plaintiff's Complaint.
55. Defendant denies information or knowledge sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "55" of Plaintiff's Complaint.
56. The allegations in the paragraph numbered "56" of Plaintiff's Complaint refer to a specific correspondence, which, being in writing speaks for itself and therefore no response is required. To the extent this paragraph infers any wrongdoing on the part of the Defendant, it is expressly denied.

57. Defendant denies the truth of each and every allegation contained in the paragraph numbered "57" of Plaintiff's Complaint.

COUNT I – BREACH OF GUARANTY

58. Defendant repeats, reiterates and realleges each and every response to the allegations contained in paragraphs "1" through "57" of Plaintiff's Complaint.

59. Defendant denies the truth of each and every allegation contained in the paragraph numbered "59" in Plaintiff's Complaint.

60. Defendant denies the truth of each and every allegation contained in the paragraph numbered "60" in Plaintiff's Complaint.

61. Defendant denies the truth of each and every allegation contained in the paragraph numbered "61" in Plaintiff's Complaint.

62. Defendant denies the truth of each and every allegation contained in the paragraph numbered "62" in Plaintiff's Complaint.

AS AND FOR DEFENDANT'S FIRST AFFIRMATIVE DEFENSE

63. The Complaint fails to state a cause of action upon which relief can be granted against Defendant.

AS AND FOR DEFENDANT'S SECOND AFFIRMATIVE DEFENSE

64. Any damages sustained by the Plaintiff as alleged in the Complaint were caused in whole or in part by the contributory negligence and/or culpable conduct of the Plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of the Defendant.

AS AND FOR DEFENDANT'S THIRD AFFIRMATIVE DEFENSE

65. Any damages sustained by the Plaintiff as alleged in the Complaint were caused in whole or in part by the contributory negligence and/or culpable conduct and/or actions and/or

omissions of a third party (whether named or unnamed in this law suit) and not as a result of any contributory negligence and/or culpable conduct and/or actions and/or omissions on the part of the Defendant.

AS AND FOR DEFENDANT'S FOURTH AFFIRMATIVE DEFENSE

66. Plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce damages pursuant to Law, Statute and Guaranty and therefore, has sustained no damages.

AS AND FOR DEFENDANT'S FIFTH AFFIRMATIVE DEFENSE

67. Upon information and belief, Plaintiff's claims are barred in whole or in part by the hold harmless and indemnification provision contained in the Guaranty.

AS AND FOR DEFENDANT'S SIXTH AFFIRMATIVE DEFENSE

68. Plaintiff has failed to plead his fraud claim with required specificity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

AS AND FOR DEFENDANT'S SEVENTH AFFIRMATIVE DEFENSE

69. Plaintiff's fraud claim fails as a matter of law because it arises out of the same facts as a breach of contract claim with the sole additional allegation that the Defendant never intended to fulfill his express contractual obligations.

WHEREFORE, Defendant, SEAN MCDEVITT, requests that this court dismiss the Complaint with prejudice and without leave to renew and award Defendant reasonable attorney's fees and costs, and such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 15, 2019

Respectfully Submitted,

WOOD, SMITH, HENNING &
BERMAN LLP

By: /s/ Christopher Seusing
Michelle Arbitrio, Esq.
Christopher Seusing, Esq.
Leah Henry, Esq.
685 Third Avenue, 18th Floor
New York, NY 10017
(212) 999-7113
marbitrio@wshblaw.com
cseusing@wshblaw.com
lhenry@wshblaw.com

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2019 a true copy of the foregoing **ANSWER TO COMPLAINT** was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to the following:

BALLARD SPAHR LLP
Attorneys for Plaintiff
Eugene R. Licker
1675 Broadway, 19th Floor
New York, New York 10019
lickere@ballardspahr.com
(212) 223-0200

/s/ Christopher Seusing
Christopher Seusing
WOOD, SMITH, HENNING & BERMAN LLP
Attorneys for Defendants
685 3rd Avenue, 18th Floor
New York, New York 10017
212-999-7100